

No. 5965-3Lab-68/17745.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Haryana, Chandigarh, in respect of the dispute between the workmen and management of M/s. Dalmia Dadri Cement Ltd., Charkhi Dadri :—

BEFORE SHRI K.L. GOSAIN, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA,
CHANDIGARH

REFERENCE No. 98 OF 1967

between

THE WORKMEN AND THE MANAGEMENT OF M/S. DALMIA DADRI CEMENT, LTD.,
CHARKHI DADRI

Present. —

Dr. Anand Parkash and Shri V. Kaushik, for the management.

Shri Madan Lal Didi, for the workmen.

AWARD

An industrial dispute having come into existence between the workmen and the management of M/s Dalmia Dadri Cement Ltd., Charkhi Dadri, the same was referred for adjudication to this tribunal under clause (d) of sub-section 1 of section 10 of the Industrial Disputes Act, 1947,—*vide* Haryana Government Notification No. 489-SF-III-Lab-67/31595, dated 27th October, 1967. The three items of dispute which are mentioned in the said reference are as under :—

- (1) Whether the management should provide guards at the cycle stand for the safety of the cycles ? If so, with what details ?
- (2) Whether Sarvshri Roop Chand and Ram Singh should be designated as Loco-Driver and Fitter, respectively ? If so, from which date and with what details ?
- (3) Whether the workmen as detailed in the Appendix should be made permanent ? If so, with what details and from which date ?

Usual notices were issued to the parties and in response to the same the workmen filed their statement of claim, and the management filed their detailed written statement to the same. The pleadings of the parties gave rise to as many as 9 issues which are as under :—

- (1) Has there been any settlement with regard to demand No. 1. If so, what effect it has on the present reference ?
- (2) Has the case of Shri Roop Chand been already decided by an award in reference No. 45 of 1961 ? If so, what effect it has on the present reference ?
- (3) What effect, if so, have the settlement dated 9th September, 1963 and 10th September, 1963 got on the question of permanency of the workmen mentioned by the management in their written statement ?
- (4) What effect has the award of this tribunal in reference No. 45 of 1964 and reference No. 31 of 1966 and award of the Labour Court, Rohtak in reference No. 81 of 1964 got over the present case ?
- (5) Cannot the demand for permanency of workmen mentioned at serial Nos. 5, 21 and 30 in the appendix to the reference be entertained by this Tribunal for reasons given in paragraph 4 of the preliminary objections in the written statement of the management ?
- (6) Can not the workmen mentioned at serial No. 1 in the appendix to the reference be made permanent for reasons given in paragraph 3 of the preliminary objections in the written statement of the management ?
- (7) Whether the management should provide guards at the cycle stand for the safety of the cycles ? If so, with what details ?
- (8) Whether Sarvshri Roop Chand and Ram Singh should be designated as Loco-Driver and Fitter, respectively ? If so, from which date and with what details ?
- (9) Whether the workmen as detailed in the appendix should be made permanent ? If so, with what details and from which date ?

Parties were directed to lead their evidence in respect of the said issues and after the close of their evidence, their representatives also addressed their arguments to me. My findings on the various issues are as under :

Issue No. 1.—No evidence has been led by the management to show that there was any settlement made on the point now raised by the workmen. The previous settlement only related to the provisions of locks for the cycles of the workmen. The present demand is for the provision of guards to watch the cycle and this demand had never previously been raised and had never been settled. The issue is decided against the management.

Issue No. 2.—In the previous reference No. 45 of 1961, the only question which fell for decision was with regard to the categorisation of the workmen into different categories. Roop Chand was then categorised as locoman but not as a loco driver. The present demand for categorising him as a locodriver has been raised about three years after the decision of the previous case. A demand has been made that Roop Chand be now designated as a loco driver. In my opinion the previous award does not operate as a bar to the present demand because it may be that during the course of the three years, which have elapsed since then, the workman concerned may have acquired more qualifications and may have become entitled to be put in a higher category. This will of course depend upon the merits of his claim but there can be no bar to going into the said merits. The claim of Ram Singh has been given up by the workmen and they have not led any evidence in respect of the same. This issue need not, therefore, be decided in so far as Ram Singh's case is concerned. The issue is decided accordingly.

Issue No. 3.—In reference No. 45 of 1964 which also arose out of a dispute between the workmen and the management of this very concern and in which a claim was made for permanency for several other workmen a similar plea was taken by the management and it formed the subject-matter of issue No. 2 in the said case. The same two settlements dated 9th September, 1963 and 10th September, 1963 which are now relied upon for the purposes of this issue were relied upon in that case also and evidently for the same purpose. I decided the said issue against the management and with regard to the same I observed as under in my award in that case :—

“The only objection pressed by the management in respect of this issue is that two settlements with regard to casual workmen were entered into between the workmen and the management and they are (1) Ex. R.1, dated 9th September, 1963 and (2) Ex. R.2, dated 10th September, 1963. The former was effected between the management on the one hand and Dalimia Dadri Cement Factory Men's Union on the other hand while the latter was effected between the management on the one hand and the Cement Factory Workers Union on the other hand. I have carefully gone through the said two settlements and am definitely of the opinion that none of them bars the present claim in the two references now in question. By the said settlements the terms and conditions of the service of the casual workmen were settled but there was no provision made in either of them that none of the casual workmen will ever be able to claim to be made a permanent workmen. The settlements only decided what wages the casual workmen will get and what other amenities they will be entitled to. The said terms were binding on the workmen only as long as the workmen remained as the casual workers. The present claim does not touch the conditions of service of the casual workmen and it is limited to the point that some of the workmen who are now casual workmen should be brought in the category of the permanent workmen. I decide this issue against the management.”

Nothing has been shown in the present case to enable me to change my view on this point and for the reasons which I gave in that award I decide this issue against the management.

Issue No. 4.—It is not denied by the parties that the award of Labour Court, Rohtak in reference No. 81 of 1964 can have no effect on the present case in as much as the High Court for the States of Haryana and Punjab has recently held that Shri Hans Raj Gupta who was the Presiding Officer of the said court and who gave the said award was not properly qualified for appointment as a Presiding Officer and that the various awards given by him are void *ab initio*.

With regard to the two awards made by this tribunal in the two references mentioned in this issue, it is admitted by the parties that the workmen whose cases have been decided by the said awards can not have their cases re-opened in the present reference and that the said awards are binding on both the parties. The issue is decided accordingly.

Issue No. 5.—This issue need not be decided as it is conceded that the claim of the workmen mentioned at No. 5, 21 and 30 has no merits and their claims has to be dismissed.

Issue No. 6.—The only plea raised by the management with regard to Ram Chander Workman is that he is a temporary workman and a reference qua him cannot be made. This objection has obviously no force because of the fact that there is no bar to an industrial dispute being raised even qua a temporary workman. This issue is decided against the management.

Issue No. 7.—The demand of the workmen is that the management should provide watchman at the cycle stand where about 200 cycles of the workmen have to be placed every day. No sufficient material has been brought on the record to substantiate this demand. The management has already provided locks for the cycles to the workmen and that in my opinion is quite enough. The demand is accordingly dismissed.

Issue No. 8.—Roop Chand was designated as a locoman by the assessor appointed for this purpose in reference 45 of 1961. There is nothing on the record to show that after the said designation he acquired any further qualifications which now entitled him to be placed in a higher category. The management have on the other hand proved that he has yet to obtain proper experience of the job of a locodriver and that he was recently charged for having caused loss to the concern for want of proper knowledge of the job. The demand that Roop Chand should be designated as a loco-driver has not in my opinion been properly established and is, therefore, dismissed. No evidence has been led with regard to the demand of Ram Singh being placed in the category of a fitter and the said demand is also dismissed.

Issue No. 9.—Similar demands were made by the workmen in respect of certain other workmen of the concern in question and it formed the subject-matter of references No. 45 of 1964 and reference No. 88 of 1965. The concern in question was then admittedly retaining about 200 casual workmen practically all of whom were provided work every day. I went into this matter in great details in my award in reference No. 45 of 1964 with which reference No. 88 of 1965 had also been consolidated. While dealing with this item of dispute I observed as follows in the said award :—

“Item of dispute No. 1 in reference No. 45 of 1964 and item of dispute in reference No. 88 of 1965.”

As already pointed out the dispute in both the reference qua this item is of the same nature. The case of the workmen is that the management is retaining about more than 200 persons on the list of their casual workmen. All of them have to report every day for duty and almost all of them are put on duty every day by the management. This system is prevailing for the last several years and most of the workmen who are on that list have been continuously on the said list for all these years. The workmen contend that this treatment of the management towards the casual workmen is extremely improper and amounts to unfair labour practice. Although most of the casual workmen are being employed each day, they are being deprived of several amenities which the permanent workmen enjoy. Some of these casual workmen have been put in one category and some others in another category and these categories have come into existence by means of settlements Ex. R.1 and R.2. Workmen of one category of them are being paid higher wages and are being allowed some of the amenities which the permanent workmen enjoy, while the workmen of the other category are being paid less wages and are not being allowed any amenity which the permanent workmen or even the other category of casual workmen enjoy. It is not denied by management that about 200 workmen are being retained as casual workmen. It is also not denied by the management that almost all of them have to report every morning and some of them have to report at the time of beginning of all the three shifts every day. It is also not denied by the management that most of them are employed every day. In fact the Head Time Keeper of the Management has stated as a witness for the management that almost all the casual workmen are employed every day and only 2 to 4 of them are sometimes sent back. The evidence of the Head Time Keeper and that of Mr. Ishwar Nath Deputy Chief Engineer of the concern is clear on the point that almost all the casual workmen are needed almost every day and are actually employed almost every day. I directed the management to file lists to show how many of these casual workmen were really employed on each day in 1964-65 and 1966. The management filed the lists relating to the years 1964 and 1966 but not with regard to 1965. The said lists also show that almost all the casual workmen were employed on almost every day by the management. It seems to me that it is altogether unjust on the part of the management to keep such a huge number of workmen on their list of the casual workmen for several years when actually they have been employed more or less regularly during all the time and they have actually worked almost all the number of days in each year. The very fact that the management had to employ almost all of them every day proves that the management needs these workmen permanently but has chosen to keep them on the casual list probably with a view to deprive them of the amenities enjoyable by the permanent workmen. It is admitted by Shri Pat Ram, Head Time Keeper of the management that the seniority of the casual workmen has been determined by means of settlements R-1 and R-2 and about 140 of such workmen are those who have been recognised to be fit for being placed in a higher category to whom wages would be paid in accordance with the recommendations of the Wage Board. I think the best course will be to make only those casual workmen permanent who are already in that category because there can be no doubt about their seniority and about their fitness for being selected as permanent workmen. In para 11 of his affidavit Ex R-71 Shri Ishwar Nath has stated as under :

"That out of the workers in the present reference those at Serial Nos. (in reference No. 45 of 1964) 11 to 17, 19 to 40, 42, 43, 45 to 54, 56 to 59, 63, 64, 68 to 76, 81, 82, 85, 87 and 91 (in reference No. 88 of 1965) 5 to 18, 20, 22, 26, 27 and 28 are getting the wages and other amenities and facilities as provided under the aforesaid settlement."

Settlements referred to in the foresaid paragraph of the affidavit of Shri Ishwar Nath are the same as was Ex. R.1 and R.2 and this is clear from the other paragraphs of the affidavit. The persons mentioned in this paragraph, therefore, are those who should immediately be brought on the permanent cadre of the workmen in the establishment in question. I direct the management to act accordingly and to bring the aforesaid persons on their permanent cadre of the workmen with effect from the date when this award is published in the official gazette. They will for the present be deemed to be unskilled workmen and will be paid wages as such on the scale given in the recommendations of the Wage Board."

It is not denied in the present case that the cases of workmen No. 2, 4, 7, 9, 10, 11, 12, 14, 16, 17, 18, 19, 22, 23, 25, 26, 28, 31, 33, and 35 mentioned in the appendix to the present reference are exactly similar to those who were made permanent in the previous awards on the basis that they were already in a higher category and that there could be no doubt about their seniority and their fitness for their being selected as the permanent workmen. During the course of arguments in this case Dr. Anand Parkash expressly admitted that the aforesaid workmen are also out of those about 140 which had been placed in the higher category by means of the two settlements, dated 9th and 10th September, 1963 which form the subject matter of issue No. 3 of the present case. For the same reasons which I gave in the previous award 20 workmen whose serial numbers have been given above are entitled to be made permanent and I make the same direction with regard to them as I made with regard to similar workmen in the previous two references No. 45 of 1964 and 88 of 1965. The management is directed to bring the aforesaid persons on their permanent cadre of the workmen with effect from the date when this award is published in the official gazette. They will for the present be deemed to be unskilled workmen and will be paid wages as such on the scale given in the recommendations of the Wage Board for the Cement Industry.

The only two other cases which are pressed before me by the workmen for being made permanent relate to Ram Chander and Narinder Singh whose names are mentioned at Serial Nos. 1 and 27 in the appendix to the reference. It is stated that none of them falls under the category of unskilled workmen because one of them, namely, Ram Chander is a welder and the other Narinder Singh is a helper to the electrician. A helper to the electrician evidently is an unskilled workman and cannot be deemed to fall either in the category of semi-skilled or in the category of skilled workmen. He has, therefore, no case for being made permanent in as much as he does not fall within the list of about 140 workmen who were placed by the management in the higher category of unskilled workmen by means of two settlements referred to above. The case of Ram Chander stands on a different footing. He is a welder and he cannot fall within the category of unskilled workmen. Since the previous two settlements related only to the unskilled workmen, his case could not have been considered by the management at that stage. It is not denied that he is working in the factory ever since 1964 and no reason is shown why he should not be brought on the permanent cadre more especially when he is performing a permanent job for the last over four years. The management is, therefore, directed to bring him also on the permanent cadre. In the cases of the workmen other

than the 20 whose serial numbers have given above and the case of Ram Charder shown at Serial No. 1 of the appendix, there is no evidence to show that any of them deserves to be brought on the permanent cadre. The demand *quæ* the other workmen is, therefore, dismissed.

No order as to costs.

Dated 28th June, 1968.

K. L. GOSAIN,
Presiding Officer,
Industrial Tribunal, Haryana,
Chandigarh.

No. 816, dated Chandigarh, the 29th June, 1968.

The award be submitted to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required by Section 15 of the Industrial Disputes Act, 1947.

K. L. GOSAIN,
Presiding Officer,
Industrial Tribunal, Haryana,
Chandigarh.

The 15th/16th July, 1968

No. 6131-3Lab 68 47625.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Haryana, Chandigarh, in respect of the dispute between the workmen and management of M/s Nav Bharat Industries, Rohtak.

BEFORE SHRI K. L. GOSAIN, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA
CHANDIGARH

Reference No. 24 of 1968

between

The workmen and the management of M/s Nav Bharat Industries, Rohtak.

Present :

Shri Biml Parshad Jain for the management.

Shri Shiv Narain Vats for the workmen.

AWARD

M/s Nav Bharat Industries, Rohtak retrenched 3 of their workmen, namely, Bani Singh, Chander Singh and Perma Nand sometimes in October, 1967. It appears that all the three workmen mentioned above were members of a trade union called The Engineering Workers Union, Registered, Bhiwan Stand, Rohtak. The said trade union served a demand notice on the management on 19th November, 1967 requiring them to reinstate all the three workmen above mentioned and to pay their back wages for the period they had been out of service. The said demand was not complied with and the conciliation proceedings with regard to the same having presumably failed, the Government of Haryana made a reference of the said dispute to this Tribunal under clause (d) of sub-section 1 of section 10 of the Industrial Disputes Act, 1947, *vide* their notification No. 1D/RK/6-68 6007, dated 5th March, 1968. The only item of dispute which is mentioned in the said notification is as follows :—

“Whether the retrenchment of Sarvshri Bani Singh, Chander Singh and Perma Nand was justified and in order? If not; to what relief are they entitled?”

Usual notices were issued to the parties and in response to the same the workmen filed their statement of claims and the management filed their written statement to the same. The pleadings of the parties give rise to two issues only which are as under and which were framed by me on 9th April, 1968 :—

1. Whether the reference in question is invalid for reasons stated in the preliminary objections of the written statement of the management?
2. Whether the retrenchment of Sarvshri Bani Singh, Chander Singh and Perma Nand was justified and in order? If not, to what relief are they entitled?

Parties have led their evidence in respect of the said issues and their representatives have also addressed their arguments to me. My findings on the said issues are as under :—

Issue No. 1.—This issue is based on a hyper-technical plea of the management which is to the effect that in the demand notice the trade union has used the word ‘Barkhast’ instead of the word ‘retrenchment’. The plea of the management is that a stand having been taken by the workmen that they had been dismissed and not retrenched, the reference which related to the retrenchment could not have been made. What, however, happened was that management did not in fact serve any notice in writing on any of the three workmen to whom the reference relates and merely told them not to join duty. The case of the management is that they tried to serve written notices on the workmen but they did not accept the

and notices. In any case it is not denied that the workmen had actually no copy of the notice with them. It is also not denied by the management that they actually retrenched the workmen in question and later offered them to rejoin. It is not the case of the management that the three workmen to whom the reference relates had at any time been dismissed. I have no doubt that before the conciliation authorities the matter was quite clear to the parties that the case was that of retrenchment and not of dismissal and on a report made by the Conciliation Officer, the Government made the present reference with regard to the retrenchment of the three workmen in question. The reference is in my opinion valid and cannot be assailed merely because in the demand notice a loose word 'Barkhast' was used. The issue is decided against the management.

Issue No. 2.—It is not denied by the management that they did not pay the wages and the retrenchment compensation to the workmen at the time they retrenched them. It is also not denied that the management even did not calculate the wages and the compensation which were payable to each of the three retrenched employees. It is also not denied by the management that in the notices which they sought to serve on the three workmen in question, they did not state what amount of wages and compensation was payable to them. It is also not denied that the said wages and compensation were actually not tendered to the retrenched persons at the time of retrenchment. The only witness which the management has produced is Kishan Chaud, Personnel Officer of their concern. All that he has stated is that whenever the workmen came there the management told them to settle their accounts. This by itself is not a compliance with the provisions of Section 25F of the Industrial Disputes Act, 1947. The afore-said Section lays down conditions precedent to the retrenchment of workmen and they are mentioned in clauses A, B and C of the said section. It is incumbent that the afore-said three conditions are complied with by the management and till it is done the retrenchment is neither complete nor legal. The management did not give to any of the workmen one month's notice in writing giving the reasons for retrenchment nor did the management pay the workmen one month's wages in lieu of such notice. It is clear from the evidence that the workmen were not paid any compensation at the time of retrenchment as is provided for in clause (b) of the afore-said section. The notice served on the appropriate Government was also not in proper form. It is not denied that all the three workmen later joined services in the same concern. Bama Chand joined on the 4th of March, 1968, and the other two joined with effect from 25th February, 1968. The question of their reinstatement, therefore, does not arise. The only relief which the workmen now ask for is that they should be paid their wages from the date of retrenchment to the date each of them rejoined service. That relief is in my opinion due to them because of the fact that their retrenchment was contrary to law. This issue is decided in favour of the workmen and the management is directed to pay them their full wages for the period they had been out of job by reason of the alleged retrenchment. This payment will be made by the management within two months from the date of the publication of this award in the official gazette.

No order as to costs.

K. L. GOSAIN,

Presiding Officer,

Dated 4th July, 1968.

Industrial Tribunal, Haryana,
Chandigarh.

No. 326, dated Chandigarh, the 5th July, 1968.

The award be submitted (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required by Section 15 of the Industrial Disputes Act, 1947.

K. L. GOSAIN,

Presiding Officer,

Industrial Tribunal, Haryana,
Chandigarh.

R. L. N. AHOOJA, Secy.

REVENUE DEPARTMENT REGISTRATION

The 10th July, 1968

No. 3171-STERII-68/2113.—In exercise of the powers conferred by Section 5 of the Indian Registration Act, 1908, the Governor of Haryana is pleased to constitute Guhla Sub-Tehsil of Tehsil Kaithal Sub-District Karnal as a separate District and to alter the limits of Kaithal sub-District in the manner indicated below:—

Sub-District
Kaithal

Alteration of limits
The limits of Kaithal Sub-District shall be exclusive of Sub-Tehsil Guhla.

No. 3171-STERII-68, 2119.—In exercise of the powers conferred by section 5 of the Indian Registration Act, 1908, the Governor of Haryana is pleased to appoint the Naib-Tehsildar, Guhla as Sub-Registrar of Sub-District Guhla constituted by Haryana Government Notification No. 3171-STER II-68/2113, dated the 10th July, 1968.

B. S. GREWAL, Secy,